

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

GIANCARLO MARTINEZ,

Plaintiff,

v.

COMMUNITY BRANDS PARENTCO.
LLC, and YOURMEMBERSHIP COM,
INC.,

Defendants.

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EXHIBIT A – INDEX OF MATTERS BEING FILED

The following are attached in connection with this Notice of Removal:

1. A list of counsel of record, including addresses, phone numbers, and parties represented (Exhibit A-1).
2. State Court Pleadings and Court Notices (Exhibit A-2):
 - a. Plaintiff's Original Petition, filed on May 31, 2022
 - b. Plaintiff's Request for Issuance of Services, filed on June 7, 2022;
 - c. Affidavits of Service with Original Citation, filed on June 13, 2022, and June 14, 2022; and
 - d. Defendants Community Brands Parentco, LLC, and Yourmembership.com, Inc.'s Answer and Affirmative and Other Defenses, filed on July 11, 2022.
3. Copy of Docket Sheet from the State Court Action, as of July 12, 2022 (Exhibit A-3).
4. Copy of the to-be filed Notice to State Court of Removal (Exhibit A-4).

Exhibit A-1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

GIANCARLO MARTINEZ,

Plaintiff,

v.

COMMUNITY BRANDS PARENTCO.
LLC, and YOURMEMBERSHIP COM,
INC.,

Defendants.

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LIST OF ATTORNEYS

<u>ATTORNEYS FOR PLAINTIFF</u>	<u>ATTORNEYS FOR DEFENDANTS</u>
<p>Brandi J. McKay Texas Bar No. 24075380 brandi@brownfoxlaw.com Morgan M. Buller Texas Bar No. 24109670 morgan@brownfoxlaw.com BROWN FOX PLLC 6303 Cowboys Way, Suite 400 Frisco, Texas 75034 Telephone: (972) 707-1860 Facsimile: (214) 327-5001</p>	<p>Stefanie R. Moll Texas Bar No. 24002870 stefanie.moll@morganlewis.com MORGAN, LEWIS & BOCKIUS LLP 1000 Louisiana Street, Suite 4000 Houston, TX 77002 Telephone: (713) 890-5780 Facsimile: (713) 890-5001</p> <p>Gabriel S. Gladstone* gabriel.gladstone@morganlewis.com MORGAN, LEWIS & BOCKIUS LLP 1 Federal Street Boston, MA 02110 Telephone: (617) 341-7700 Facsimile: (617) 341-7701</p> <p><i>*pro hac vice forthcoming</i></p>

Exhibit A-2

D-1-GN-22-002492
CAUSE NO. _____

GIANCARLO MARTINEZ,

Plaintiff,

v.

COMMUNITY BRANDS PARENTCO.,
LLC, and YOURMEMBERSHIP COM
INC.,*Defendants.*§
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IN THE DISTRICT COURT

261ST, DISTRICT COURT

____ JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

Plaintiff Giancarlo Martinez ("Martinez" or "Plaintiff") files this Original Petition against Defendants Community Brands ParentCo., LLC and Yourmembership Com Inc. (collectively referred to as "Defendants" or "Community Brands"), and in support thereof respectfully shows the Court the following:

I.
DISCOVERY LEVEL

1. Discovery is governed by Level 3 of Rule 190.4 of the TEXAS RULES OF CIVIL PROCEDURE.

II.
PARTIES

2. Plaintiff Giancarlo Martinez is a resident of Travis County, Texas.

3. Defendant Community Brands ParentCo., LLC is a foreign limited liability company formed under the laws of the state of Delaware that engages, or has engaged, in business in the State of Texas. This lawsuit arises out of the business done in this state. More specifically, Defendant Community Brands ParentCo., LLC has hired and maintains employees in this state. Defendant Community Brands ParentCo., LLC may be served through its registered agent, The

Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

4. Defendant Yourmembership Com Inc. is a foreign for-profit corporation formed under the laws of the state of Florida that engages, or has engaged, in business in the State of Texas. Defendant Yourmembership Com Inc. maintains a business address at 6300 Bridge Point Parkway, Suite 300, Austin, TX 78730. This lawsuit arises out of the business done in this state. More specifically, Defendant has hired and maintains employees in this state. Defendant Yourmembership Com Inc. may be served through its registered agent, CT Corporation System, 1200 South Pine Island Rd, Plantation, FL 33324.

III.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this controversy because the damages are within the jurisdictional limits of this Court.

6. Venue is proper in Travis County in that all or a substantial part of the events giving rise to the claim occurred in Travis County, Texas. TEX. CIV. PRAC. & REM. CODE 15.002(a)(2).

IV.

TRCP 47 STATEMENT

7. Plaintiff seeks only monetary relief of \$250,000 or less, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs. TEX. R. CIV. P. 47(C)(1).

V.

FACTUAL BACKGROUND

8. Plaintiff Giancarlo Martinez is a 44-year-old Hispanic man. In August 2021, Mr. Martinez was actively recruited by Defendants to leave his successful sales position with Salesforce. As inducement for Mr. Martinez to leave his position with Salesforce, Defendants promised to provide Mr. Martinez with a lucrative compensation package that included equity

incentives based on performance and longevity with Community Brands, commissions, and a severance payment if he was terminated without cause.

9. On September 7, 2021, Mr. Martinez accepted Defendants' offer of employment to become Senior Vice President of Sales and entered into a written employment agreement, which provided the following: 1) Base Salary of \$260,000, annually; 2) Executive Bonus Plan of \$165,000, annually; 3) Signing Bonus of \$23,000, to be paid within 60 days of his start date; 4) Severance Payment of eight-weeks' base salary if terminated without cause; 5) Equity Incentive in the form of 50,000 award units; and 6) medical, dental, vision, life, and 401k benefits (the "2021 Employment Agreement").

10. From September 20, 2021 through early February 2022, Mr. Martinez reported to Ryan Vasquez, Executive Vice President of Sales for Community Brands. At all times while reporting to Mr. Vasquez, Mr. Martinez received accolades for his performance and overachieved his quota.

11. Despite multiple requests by Mr. Martinez, Defendants never issued him the 50,000 units of equity it promised, nor did it pay him the signing bonus within the first 60 days as required by the 2021 Employment Agreement. Instead, Defendants paid him the signing bonus more than 70 days after Mr. Martinez's employment commenced and only after he raised the issue.

12. In December 2021, following the Community Brands' divestiture of the Ministry Brands subsidiary, Defendants offered to repurchase their employees' equity interests or offered to pay employees, including Mr. Martinez and others, a bonus payout due to their failure to issue the promised equity.

13. In early January 2022, Mr. Vasquez advised Mr. Martinez that Defendants would pay him a bonus amount in lieu of the issuance of equity as part of the Ministry Brands divestiture

that had occurred in December 2021. A few weeks later, Mr. Vasquez resigned from his employment with Defendants.

14. On January 25, 2022, Jennifer Lee, Managing Director of Associations and Events for Defendants, met with Mr. Martinez to discuss Defendants' proposed promotion of Mr. Martinez to Executive Vice President of Sales, and to discuss his proposed compensation. During that discussion, Mr. Martinez raised the issue of the Defendants' failure to issue equity as promised in the 2021 Employment Agreement. As inducement for Mr. Martinez to accept the new role, Ms. Lee represented that Defendants would pay \$168,250 to Mr. Martinez in lieu of issuance of the equity units he was previously entitled to receive. Ms. Lee represented that the payout would be made in two separate payments. The first payment of \$112,000 was to be paid in early March 2022, and the second payment of \$56,250 was to be paid in January 2023. This promise by Ms. Lee was in line with the same Tender Offers made by Defendants to multiple employees on or about January 26, 2022.

15. On February 4, 2022, Defendants sent Mr. Martinez a new employment agreement which memorialized his new position as Executive Vice President of Sales, reporting to Jennifer Lee (the "2022 Employment Agreement"). Pursuant to the 2022 Employment Agreement, Mr. Martinez's annual base salary was increased to \$300,040 per year and his executive bonus plan was increased to \$199,980 annually. On February 7, 2022, Mr. Martinez assumed the role of Executive Vice President of Sales. Following the resignation of Mr. Vasquez, Mr. Martinez was the only Hispanic individual in an executive leadership position at the Company.

16. Three weeks later, February 23, 2022, Mr. Martinez was informed during a call with Jennifer Lee and Defendants' HR representative, that his employment was being terminated by Defendants for cause. To his shock, Mr. Martinez was advised for the first time that Defendants

had allegedly received a claim of inappropriate conduct by Mr. Martinez and that it had allegedly investigated¹ the claim. The Company alleges that as a result of the investigation, it found that Mr. Martinez: (1) treated female employees very different than male employees; (2) knowingly violated the personnel boundaries of a female direct report; and (3) made inappropriate comments and asked unwelcome questions of female employees.

17. On February 25, 2022, in response to Mr. Martinez's request for additional information regarding the alleged complaint against him, Defendants' HR representative stated the following:

An incident that I can reference because there are multiple witnesses is from a recorded SKO session. You ask everyone in the session to give you their home addresses and clothing sizes so you can send everyone the outfit that an employee is wearing in a photograph that you pulled from the internet to use earlier in the presentation. You say that "we are all going to dress like that one day" because its "going to blow the minds of our customers." You then stand up while still on camera to point to your right hip/upper thigh asking, "how are they going to get to see our skirt?" An employee then interrupts to say "no" and ask for "healthy boundaries." You then sit down and start laughing.

18. Mr. Martinez emphatically denies that he made any inappropriate (gender specific or disparate) statements regarding the employee in the photo (or any other employee—male or female). Instead, he was pointing out an employee's ***brightly colored, wild patterned clothing*** worn at a company marketing event, which the employee stated she wore intentionally to attract the attention of customers. The photo at issue was posted on the employee's Twitter page and showed her at a company sanctioned event. There was nothing gender specific or inappropriate about the clothing or Mr. Martinez's comment.

¹ Mr. Martinez was never interviewed as part of the alleged investigation, nor did Defendants ever request that he provide any documents, recordings, or communications he exchanged with any of his colleagues or subordinates. Moreover, Mr. Vasquez has confirmed that he never received any complaints regarding Mr. Martinez and was not aware of any concerns regarding his conduct.

19. It is clear that Defendants created an alleged “Cause” finding in order to terminate Mr. Martinez and avoid paying him the compensation it previously promised to pay him; it is the classic “bait and switch” scenario.

20. After terminating Mr. Martinez’s employment, Defendants failed to pay him the benefits due to him. Specifically, Defendants failed to pay Mr. Martinez for: 1) the increased sales commissions of \$6,658.32 owed to him through the date of his termination given his new role as Executive Vice President of Sales; 2) the equity payout of \$168,250; and 3) \$50,000 in severance.

21. Defendant has breached the Employment Agreements causing damages to Mr. Martinez within the jurisdictional limits of this court for which he now sues.

VI.

BREACH OF CONTRACT

22. The allegations contained in foregoing paragraphs are hereby incorporated by reference.

23. As set forth above, Mr. Martinez and Defendants entered into valid and enforceable agreements when Mr. Martinez was hired by Defendants as the Senior Vice President of Sales and later promoted to Sales Executive Vice President.

24. Defendants breached the Employment Agreements by failing to pay Mr. Martinez: 1) all sales commissions owed to him through the date of his termination; 2) the equity payout of \$168,250; and 3) \$50,000 in severance.

25. As a result of Defendants’ breach of the Employment Agreements, Mr. Martinez has suffered significant financial damages.

VII.
PROMISSORY ESTOPPEL

26. The allegations contained in foregoing paragraphs are hereby incorporated by reference.

27. Defendants promised to pay Mr. Martinez: 1) all sales commissions pursuant to the Executive Bonus Plan owed to him through the date of his termination; 2) the equity payout of \$168,250; and 3) \$50,000 in severance for termination without cause.

28. Mr. Martinez reasonably and substantially relied upon Defendants promises to pay him the amounts set forth above as compensation and inducement for his continued employment with Defendants.

29. Mr. Martinez's reliance upon the promises by Defendants was foreseeable.

30. Injustice to Mr. Martinez can be avoided only by enforcing Defendants' promises to pay Mr. Martinez: 1) all sales commissions pursuant to the Executive Bonus Plan owed to him through the date of his termination; 2) the equity payout of \$168,250; and 3) \$50,000 in severance for termination without cause.

VIII.
FRAUD/FRAUD IN THE INDUCEMENT

31. The allegations contained in foregoing paragraphs are hereby incorporated by reference.

32. Defendants made numerous misrepresentations of material facts and promises to Mr. Martinez including the various representations that Defendants would provide him with an equity incentive in the form of 50,000 award units if he accepted employment with them, and later that they would pay him \$168,250 in lieu of the 50,000 award units.

33. Defendants' representations and promises were made in order to induce Mr. Martinez to accept employment and remain employed by Defendants. Mr. Martinez relied on Defendants' misrepresentations and promises when accepting, and continuing, his employment with Defendants.

34. Defendants' actions stated above constitute fraud/fraud in the inducement. Defendants made material misrepresentations and promises with the knowledge of their falsity and with the intention that Mr. Martinez rely on those misrepresentations to enter into the Employment Agreements which ultimately caused injury to Mr. Martinez.

35. As a result of Defendants' fraudulent actions, Mr. Martinez has suffered damages within the jurisdictional limits of this Court, for which he now sues.

36. Mr. Martinez's injuries resulted from Defendants' actual fraud or malice, which entitles Mr. Martinez to exemplary damages. TEX. CIV. PRAC. & REM. CODE §41.003(a).

IX.
ATTORNEYS' FEES

37. Mr. Martinez seeks recovery of his reasonable and necessary attorneys' fees from Defendants through trial and all appeals pursuant the parties' contract, §38.001 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, and at law or in equity.

X.
CONDITIONS PRECEDENT AND ALTERNATIVE ALLEGATIONS

38. All conditions precedent to Mr. Martinez's recovery in this action have occurred or have been performed. Pursuant to Rules 47 and 48 of the TEXAS RULES OF CIVIL PROCEDURE, the allegations made in this petition are made in the alternative.

XI.
PRAYER

For these reasons, Plaintiff Giancarlo Martinez prays that Defendants Community Brands ParentCo., LLC and Yourmembership Com Inc. be cited to appear and answer, that upon final trial of this cause, judgment be entered for Plaintiff against the Defendants for the following relief:

- (1) Judgment against Defendants on all causes and for all damages;
- (2) Exemplary damages;
- (3) Costs of suit, including reasonable and necessary attorneys' fees;
- (4) Pre-judgment and post-judgment interest at the highest rate allowed by law; and
- (5) all other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

BROWN FOX PLLC

By: 

BRANDI J. MCKAY

State Bar No. 24075380

brandi@brownfoxlaw.com

MORGAN M. BULLER

State Bar No. 24109670

morgan@brownfoxlaw.com

6303 Cowboys Way, Suite 400

Frisco, Texas 75034

(972) 707-1860 (Telephone)

(214) 327-5001 (Facsimile)

ATTORNEYS FOR PLAINTIFF

6/7/2022 10:26 AM
Velva L. Price
District Clerk
Travis County
D-1-GN-22-002492
Jessica A. Limon



Michelle Garcia
(972) 707-1806
michelle@brownfoxlaw.com

June 7, 2022

Travis County District Clerk
5325 Airport Blvd., Suite 1100
Austin, TX 78751

Re: Request for Issuance of (2) Citations; Cause No. D-1-GN-22-002492; *Giancarlo Martinez v. Community Brands ParentCo., LLC and Yourmembership COM Inc.*; Pending in the 261st Judicial District Court of Travis County, Texas

Dear Ms. Price:

This law firm represents Plaintiff, Giancarlo Martinez in the above-referenced matter. This correspondence shall serve as a request for the issuance of two Citations on:

- (1) Defendant Community Brands Parent Co., LLC, through its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801;
- (2) Defendant Yourmembership Com Inc., through its registered agent, CT Corporation System, 1200 South Pine Island Rd., Plantation, FL 33324.

Please issue the Citations and thereafter e-mail same to michelle@brownfoxlaw.com.

Thank you for your attention to this matter.

Sincerely,
/s/ Michelle Garcia
Michelle Garcia,
Legal Assistant to Brandi J. McKay

/mg

CITATION

THE STATE OF TEXAS

CAUSE NO. D-1-GN-22-002492

6/13/2022 4:16 PM

Velva L. Price

District Clerk

Travis County

D-1-GN-22-002492

GIANCARLO MARTINEZ

, PLAINTIFF(S)

Norma Ybarra

vs.

COMMUNITY BRANDS PARENTCO LLC; YOURMEMBERSHIP COM INC

, DEFENDANT(S)

TO: **COMMUNITY BRANDS PARENTCO LLC**
BY SERVING ITS REGISTERED AGENT THE CORPORATION TRUST COMPANY
1209 ORANGE STREET - CORPORATION TRUST CENTER
WILMINGTON TX 19801

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org."

Attached is a copy of the **PLAINTIFFS ORIGINAL PETITION** in the above styled and numbered cause, which was filed on **May 31, 2022** in the **261st District Court** of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, **June 10, 2022**

REQUESTED BY:
MCKAY, BRANDI J
6303 COWBOYS WAY #400
FRISCO, TX 75034



Velva L. Price
 Velva L. Price
 Travis County District Clerk
 Travis County Courthouse
 1000 Guadalupe, P.O. Box 679003 (78767)
 Austin, TX 78701

PREPARED BY: **Jessica A.-Limon**

RETURN

Came to hand on the _____ day of _____, _____ at _____ o'clock _____ M., and executed at _____ within the County of _____ on the _____ day of _____, _____, at _____ o'clock _____ M., by delivering to the within named _____, each in person, a true copy of this citation together with the **PLAINTIFFS ORIGINAL PETITION** accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ _____

Sheriff / Constable / Authorized Person

Sworn to and subscribed before me this the

By: _____

_____ day of _____, _____.

Printed Name of Server

 Notary Public, THE STATE OF TEXAS
D-1-GN-22-002492

County, Texas**SERVICE FEE NOT PAID**

CAUSE NO. D-1-GN-22-002492

GIANCARLO MARTINEZ

Plaintiff,

VS.

COMMUNITY BRANDS PARENTCO LLC;
YOURMEMBERSHIP COM INC

Defendant.

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IN THE COURT OF

TRAVIS COUNTY,

261ST JUDICIAL DISTRICT COURT

AFFIDAVIT OF SERVICE

On this day personally appeared SELENA CABRERA who, being by me duly sworn, deposed and said:

"The following came to hand on Jun 13, 2022, 10:06 am,

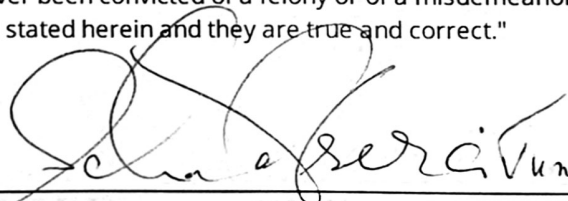
CITATION, PLAINTIFF'S ORIGINAL PETITION, LAWYER REFERRAL SERVICE FORM,

and was executed at 1209 ORANGE ST, WILMINGTON, DELAWARE 19801 within the county of New Castle at 11:55 AM on Mon, Jun 13 2022, by delivering a true copy to the within named

COMMUNITY BRANDS PARENTCO LLC BY SERVING ITS REGISTERED AGENT THE CORPORATION TRUST COMPANY BY SERVING ITS EMPLOYEE PATRICK DUFFY

in person, having first endorsed the date of delivery on same.

I am a person over eighteen (18) years of age and I am competent to make this affidavit. I am familiar with the Texas Rules of Civil Procedure as they apply to service of Process. I am not a party to this suit nor related or affiliated with any herein, and have no interest in the outcome of the suit. I have never been convicted of a felony or of a misdemeanor involving moral turpitude. I have personal knowledge of the facts stated herein and they are true and correct."

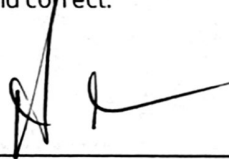

June 13, 2022
SELENA CABRERA

BEFORE ME, a Notary Public, on this day personally appeared SELENA CABRERA, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are within his or her personal knowledge and are true and correct.

SUBSCRIBED AND SWORN TO ME ON June 13, 2022

HERMINIO CABRERA
NOTARY PUBLIC
STATE OF DELAWARE

My Commission Expires 7-31-2022


Notary Public, State of Delaware



Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 65393430

Status as of 6/15/2022 8:26 AM CST

Associated Case Party: GIANCARLO MARTINEZ

Name	BarNumber	Email	TimestampSubmitted	Status
BRANDI MCKAY		brandi@brownfoxlaw.com	6/13/2022 4:16:11 PM	SENT

6/16/2022 11:27 AM

CITATION
THE STATE OF TEXAS
CAUSE NO. D-1-GN-22-002492

Velva L. Price

District Clerk

Travis County

D-1-GN-22-002492

, PLAINTIFF(S) Gilberto Diaz-Rios

GIANCARLO MARTINEZ

vs.

COMMUNITY BRANDS PARENTCO LLC; YOURMEMBERSHIP COM INC

, DEFENDANT(S)

TO: **YOURMEMBERSHIP COM INC**
BY SERVING ITS REGISTERED AGENT CT CORPORATION SYSTEM
1200 SOUTH PINE ISLAND ROAD
PLANTATION FL 33324

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org.

Attached is a copy of the **PLAINTIFFS ORIGINAL PETITION** in the above styled and numbered cause, which was filed on **May 31, 2022** in the **261st District Court** of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, **June 10, 2022**

REQUESTED BY:
MCKAY, BRANDI J
6303 COWBOYS WAY #400
FRISCO, TX 75034



Velva L. Price
 Velva L. Price
 Travis County District Clerk
 Travis County Courthouse
 1000 Guadalupe, P.O. Box 679003 (78767)
 Austin, TX 78701

PREPARED BY: **Jessica A.-Limon**

R E T U R N

Came to hand on the _____ day of _____, _____ at _____ o'clock _____ M., and executed at _____ within the County of _____ on the _____ day of _____, _____, at _____ o'clock _____ M., by delivering to the within named _____, each in person, a true copy of this citation together with the **PLAINTIFFS ORIGINAL PETITION** accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ _____

Sheriff / Constable / Authorized Person

Sworn to and subscribed before me this the

By: _____

_____ day of _____, _____.

Printed Name of Server

 Notary Public, THE STATE OF TEXAS
D-1-GN-22-002492

County, Texas**SERVICE FEE NOT PAID**

CAUSE NO. D-1-GN-22-002492

GIANCARLO MARTINEZ

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IN THE COURT OF

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Plaintiff,

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VS.

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TRAVIS COUNTY,

§

COMMUNITY BRANDS PARENTCO LLC;
YOURMEMBERSHIP COM INC

§

Defendant.

§

261ST JUDICIAL DISTRICT COURT

AFFIDAVIT OF SERVICE

On this day personally appeared **KIMBERLY URTNOWSKI** who, being by me duly sworn, deposed and said:

"The following came to hand on **6/10/2022 5:35PM**,

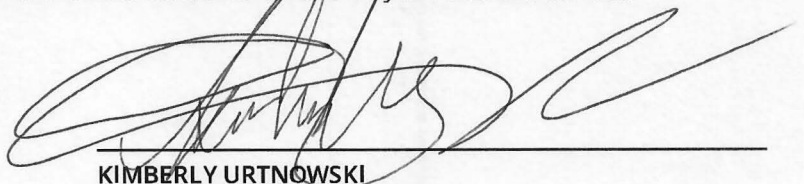
CITATION, PLAINTIFF'S ORIGINAL PETITION, LAWYER REFERRAL SERVICE FORM

and was executed at **1200 S Pine Island Rd, PLANTATION, FL 33324** within the county of **Broward** at **09:50 AM** on **Tue, Jun 14 2022**, by delivering a true copy to the within named

**YOURMEMBERSHIP COM INC BY SERVING ITS REGISTERED AGENT CT CORPORATION SYSTEM BY SERVING ITS
EMPLOYEE DONNA MOCH**

in person, having first endorsed the date of delivery on same.

I am a person over eighteen (18) years of age and I am competent to make this affidavit. I am familiar with the Texas Rules of Civil Procedure as they apply to service of Process. I am not a party to this suit nor related or affiliated with any herein, and have no interest in the outcome of the suit. I have never been convicted of a felony or of a misdemeanor involving moral turpitude. I have personal knowledge of the facts stated herein and they are true and correct."

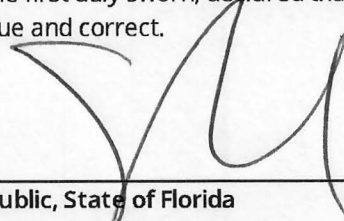


KIMBERLY URTNOWSKI

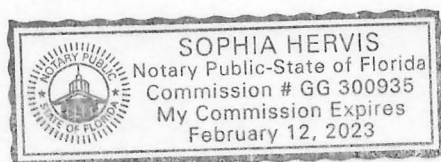
BEFORE ME, a Notary Public, on this day personally appeared **KIMBERLY URTNOWSKI**, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are within his or her personal knowledge and are true and correct.

SUBSCRIBED AND SWORN TO ME ON

6/14/22



Notary Public, State of Florida



Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 65505145

Status as of 6/18/2022 1:12 PM CST

Associated Case Party: GIANCARLO MARTINEZ

Name	BarNumber	Email	TimestampSubmitted	Status
BRANDI MCKAY		brandi@brownfoxlaw.com	6/16/2022 11:27:32 AM	SENT

From: no-reply@efilingmail.tylertech.cloud
Sent: Monday, July 11, 2022 8:47 AM
To: Boerder, Michele M.
Subject: Courtesy Copy of Service for Case: D-1-GN-22-002492, GIANCARLO MARTINEZvs.COMMUNITY BRANDS PARENTCO LLC,YOURMEMBERSHIP COM INC for filing Answer/Response, Envelope Number: 66173789

[EXTERNAL EMAIL]



Copy of Service

Case Number: D-1-GN-22-002492

Case Style: GIANCARLO

MARTINEZvs.COMMUNITY BRANDS

PARENTCO LLC,YOURMEMBERSHIP COM INC

Envelope Number: 66173789

This is a courtesy copy of service for the filing listed. Please click the link below to retrieve the submitted document. If the link does not work, please copy the link and paste into your browser. You can also obtain this document by following the steps on this [article](#).

Filing Details	
Case Number	D-1-GN-22-002492
Case Style	GIANCARLO MARTINEZvs.COMMUNITY BRANDS PARENTCO LLC,YOURMEMBERSHIP COM INC
Envelope Number	66173789
Date/Time Submitted	7/11/2022 8:45 AM CST
Filing Type	Answer/Response
Filing Description	Answer and Affirmative and Other Defenses
Filed By	Michele Boerder
Service Contacts	<p>GIANCARLO MARTINEZ:</p> <p>BRANDI MCKAY (brandi@brownfoxlaw.com)</p> <p>COMMUNITY BRANDS PARENTCO LLC:</p> <p>Michele Boerder (michele.boerder@morganlewis.com)</p> <p>Stefanie Moll (stefanie.moll@morganlewis.com)</p> <p>Gabriel Gladstone (gabriel.gladstone@morganlewis.com)</p>

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CAUSE NO. D-1-GN-22-002492

GIANCARLO MARTINEZ,	§	IN THE DISTRICT COURT
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	261ST DISTRICT COURT
	§	
COMMUNITY BRANDS PARENTCO.	§	
LLC, and YOURMEMBERSHIP COM,	§	
INC.,	§	
	§	TRAVIS COUNTY, TEXAS
<i>Defendants.</i>	§	

**DEFENDANTS COMMUNITY BRANDS PARENTCO, LLC, AND
YOURMEMBERSHIP.COM, INC.'S ANSWER AND
AFFIRMATIVE AND OTHER DEFENSES**

On May 31, 2022, Plaintiff Giancarlo Martinez (“Martinez”) filed his Original Petition (“Petition”). In response, Defendants Community Brands Parentco, LLC, and Yourmembership.com, Inc. (together, “Community”) file their Answer and Affirmative and Other Defenses in support hereof, showing the following:

**I.
GENERAL DENIAL**

Community asserts a general denial to Martinez’s Petition, as authorized by Rule 92 of the Texas Rules of Civil Procedure. Community demands that the Court require Martinez to prove all claims, charges, and allegations by a preponderance of the evidence as required by the Constitution and laws of the State of Texas. Community further asserts this general denial subject to and without waiving any of the below-referenced affirmative and other defenses, and without waiving the right to add to or otherwise amend these defenses in due time, as permitted under the Rules.

II. AFFIRMATIVE AND OTHER DEFENSES

Community asserts the following affirmative and other defenses without assuming the burden of proof where such burden is otherwise on Martinez pursuant to the applicable substantive or procedural law. Community also asserts these defenses without conceding that they are in fact affirmative defenses or that Community has the burden of proving these defenses.

1. Martinez's claims should be dismissed, in whole or in part, because they have no basis in law or fact.

2. Martinez's claims should be dismissed, in whole or in part, because Martinez and Community did not enter into a contract.

3. Martinez's claims should be dismissed, in whole or in part, because, to the extent that Martinez and Community entered into a contract, Community did not breach the terms of that contract.

4. Martinez's claims should be dismissed, in whole or in part, because, to the extent that Martinez and Community entered into a contract, Martinez materially breached the agreement.

5. Martinez's claims should be dismissed, in whole or in part, because, to the extent that Martinez and Community entered into a contract, there was no separate promise independent of that contract.

6. Martinez's claims should be dismissed, in whole or in part, because, to the extent Community made a promise to Martinez, Community did not intend for Martinez to rely on such promise, Martinez did not rely on such promise to his detriment

or otherwise, Community did not intend to deceive Martinez with any such promise, and it was unreasonable and unjustified for Martinez to have relied upon any alleged promise.

7. Martinez's claims should be dismissed, in whole or in part, to the extent they are barred by the applicable statutes of limitations.

8. Martinez's claims should be dismissed, in whole or in part, to the extent that they are barred by the doctrines of waiver, estoppel, ratification, novation, modification, and/or accord and satisfaction.

9. Martinez's claims should be dismissed, in whole or in part, to the extent that Martinez's alleged injuries or damages were caused by his own acts or omissions.

10. Martinez's claims for damages are subject to applicable constitutional and statutory caps and/or limitations.

11. Martinez's claims should be dismissed, in whole or in part, to the extent that Martinez failed to mitigate his alleged damages, if any.

12. Martinez is not entitled to recover exemplary damages because he has failed to allege any facts that warrant the award of such damages.

13. Martinez is not entitled to recover exemplary damages because all applicable actions taken by Community were taken in good faith.

14. Martinez is not entitled to recover exemplary damages because he cannot prove by clear and convincing evidence that Community acted with actual malice, specific intent, or fraud to cause injury.

III. JURY DEMAND

Community demands a jury trial on all applicable issues.

**IV.
PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Defendants Community Brands Parentco, LLC, and Yourmembership.com, Inc. respectfully pray that the Court dismiss Plaintiff's claims, that Martinez take nothing, and that the Court grant such other relief, at law and in equity, to which Community is justly entitled.

Dated: July 11, 2022

Respectfully submitted,

/s/ Stefanie R. Moll

Stefanie R. Moll

State Bar No. 24002870

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MORGAN, LEWIS & BOCKIUS LLP

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served on all counsel of record via e-filing in compliance with the requirements of the Texas Rules of Civil Procedure on July 11, 2022.

/s/ Stefanie R. Moll

Stefanie R. Moll

Exhibit A-3

261st District Court

Case Summary

Case No. D-1-GN-22-002492

**GIANCARLO MARTINEZ vs.
COMMUNITY BRANDS PARENTCO
LLC, YOURMEMBERSHIP COM INC**

§ Location
§ **261st District Court**
§ Judicial Officer
§ **261ST, DISTRICT COURT**
§ Filed on
§ **05/31/2022**

Case Information

Case Type: Debt/Contract -
Debt/Contract

Case Status: **05/31/2022 Open**

Assignment Information

Current Case Assignment

Case Number D-1-GN-22-002492
Court 261st District Court
Date Assigned 05/31/2022
Judicial Officer 261ST, DISTRICT COURT

Party Information

Plaintiff MARTINEZ, GIANCARLO

**MCKAY, BRANDI J
Retained**

**Defendant COMMUNITY BRANDS PARENTCO LLC
YOURMEMBERSHIP COM INC**

Case Events

05/31/2022 EXPEDITED ORIG PET RULE 169 (OCA)
PLAINTIFFS ORIGINAL PETITION
Party: Plaintiff MARTINEZ, GIANCARLO

06/07/2022 OTHER
LETTER - REQUESTING CITATIONS

06/13/2022 EXECUTED SERVICE
CITATION COMMUNITY BRANDS PARENTCO LLC

06/16/2022 EXECUTED SERVICE
EXECUTED CITATION-YOURMEMBERSHIP COM INC
Party: Defendant YOURMEMBERSHIP COM INC

Service Events

06/10/2022 **Citation**
COMMUNITY BRANDS PARENTCO LLC
Served: 06/13/2022
YOURMEMBERSHIP COM INC
Served: 06/14/2022

Exhibit A-4

CAUSE NO. D-1-GN-22-002492

GIANCARLO MARTINEZ,	§	IN THE DISTRICT COURT
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	261ST DISTRICT COURT
	§	
COMMUNITY BRANDS PARENTCO.	§	
LLC, and YOURMEMBERSHIP COM,	§	
INC.,	§	
	§	TRAVIS COUNTY, TEXAS
<i>Defendant.</i>	§	

NOTICE OF FILING NOTICE OF REMOVAL

Please take notice that pursuant to federal law, Defendants Community Brands Parentco, LLC, and Yourmembership.com, Inc., have filed a Notice of Removal with the clerk of the United States District Court for the Western District of Texas, Austin Division, a copy of which is attached as Exhibit A. Accordingly, this Court is respectfully requested to proceed no further in this action unless and until this action is remanded, if at all, by order of the United States District Court.

Dated: July 12, 2022

Respectfully submitted,

/s/ Stefanie R. Moll

Stefanie R. Moll

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served on all counsel of record via e-filing in compliance with the requirements of the Texas Rules of Civil Procedure on July 12, 2022.

/s/ Stefanie R. Moll

Stefanie R. Moll